BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2024

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.P(MD)No.7806 of 2024
and
W.M.P.(MD)Nos.7107 and 7108 of 2024

Shiva Dharshan ... Petitioner

vs

1.The Authorised Officer,
Indian Bank, Madurai Main Branch,
Madurai.

2.K.Mohammed Ashik ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to all further proceedings under the SARFAESI Act pursuant to the impugned order, dated 20.02.2024 in Crl.M.P.No.103 of 2024 on the file of the learned Chief Judicial Magistrate Court, Madurai and to quash the same and consequently, to direct the first respondent Bank to pay the lease amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the petitioner for vacating the property.

For Petitioner : Mr.C.Jeganathan

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ORDER

(Order of this Court was made by **G.ARUL MURUGAN, J.**)

The Writ Petition is filed challenging the impugned order, dated 20.02.2024 passed by the learned Chief Judicial Magistrate, Madurai, in Crl.M.P.No.103 of 2024 under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") and for a consequential direction to direct the first respondent Bank to pay the lease amount of Rs.15,00,000/- to the petitioner for vacating the property.

2.According to the petitioner, he is a physically disabled person and since his father died on 02.04.2018, his mother has leased out the property by entering into a lease agreement with the second respondent on 18.08.2019 by paying the lease amount of Rs.15,00,000/-. They had been in possession of the house for nearly five years and the petitioner's mother also died on 18.05.2021 and now only the petitioner and his sister are residing in the premises.

3.The second respondent, owner of the property had borrowed a loan from the first respondent Bank for a sum of Rs.33,00,000/- and since loan amount was not repaid, SARFAESI proceedings were initiated and notice under Section 13(2) of SARFAESI Act was issued on 17.09.2022 and symbolic possession of the property was taken under Section 13(4) of SARFAESI Act on 17.09.2022. Thereafter, the secured creditor filed an application under Section 14 of the SARFAESI Act. The learned Chief Judicial Magistrate, Madurai, by order, dated 20.02.2024, in Crl.M.P.No. 103 of 2024 passed orders appointing an Advocate Commissioner to hand over the possession of the property to the respondent Bank.

4.The petitioner being the lessee in the possession of the property through an un-registered lease agreement cannot have any claim over the property as against the secured creditor, when the Bank has initiated SARFAESI proceedings and an order under Section 14 of SARFAESI Act, has been passed by the learned Chief Judicial Magistrate, Madurai, in Crl.M.P.No.103 of 2024. As against any orders passed under Section 14 of the SARFAESI Act, an alternative remedy is available and only an application under Section 17 of SARFAESI Act can be filed before the

Debts Recovery Tribunal.

5.In the decision reported in ***(2010) 8 SCC 110*** in the case of ***Union Bank of India -vs- Satyawadi Tondon and others***, the Hon'ble Supreme Court has held that the party aggrieved by any orders passed under Section 14 of SARFAESI Act, had to file an appeal before the Debts Recovery Tribunal and held as follows:

> *"**42.**There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the Sarfaesi Act are both expeditious and effective.*
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> ***43.**Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of*

quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

44.*While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.*

45.*It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.*

.....

55.*It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."*

6.The dictum laid down by the Hon'ble Supreme Court was also reiterated by the Hon'ble Supreme Court in the case of ***South Indian Bank***

Limited and others vs Naveen Mathew Philip and another, reported in ***2023 SCC OnLine (SC) 435***

7.In view of the settled possession of law, the Writ Petition is not maintainable. However, in view of the peculiar facts of the present case, where, the petitioner being a physically disabled person, who has lost both his parents and residing in the property with his younger sister, the Writ Petition is dismissed with liberty to the Writ Petitioner to file necessary application before the Debts Recovery Tribunal, Madurai, within a period of three weeks from the date of receipt of a copy of this order. Till such time, the impugned order, dated 20.02.2024 passed in Crl.M.P.No.103 of 2024 on the file of the learned Chief Judicial Magistrate, Madurai, shall be kept in abeyance. No costs. Consequently, connected Miscellaneous Petitions are closed.

[R.S.K., J] & [G.A.M., J]
01.04.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No
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Note: Issue order copy by **03.04.2024**.

To

The Chief Judicial Magistrate, Madurai.

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.7806 of 2024

01.04.2024